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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/693,554	10/24/2003	Fumii Higuchi	D/A1101D	3608

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XEROX CORPORATION
100 CLINTON AVE., SOUTH, XEROX SQUARE, 20TH FLOOR
ROCHESTER, NY 14644

EXAMINER

DANIELS, MATTHEW J

ART UNIT	PAPER NUMBER
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1732

MAIL DATE	DELIVERY MODE
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05/16/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/693,554

Applicant(s)

HIGUCHI, FUMII

Examiner

Matthew J. Daniels

Art Unit

1732

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 12 April 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: _____.
Claim(s) rejected: 1-24.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See the enclosed response to arguments.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____.
13. ☐ Other: _____.

Continuation of 3. NOTE: The new limitations would require at least further consideration to determine whether the claimed effects "smoothing and squeezing" are necessarily present in the references applied, and may require further search for the claimed configuration

Response to Arguments

Applicant's arguments filed 12 April 2007 have been fully considered but they are not persuasive. The arguments appear to be on the following grounds:

- a) It is unreasonable to assert that Higuchi and Meinander, individually or in combination, teach or suggest a lead-in gap between a wall of the housing and the conveyor at a feed port end that inhibits adhesion by smoothing and squeezing resin to the side of the conveyor.
- b) There Meinander and Higuchi references are not combinable because they are directed at different problems and are non-analogous.
- c) Meinander does not contemplate adjustable clearances.
- d) Higuchi teaches away from the feature recited in Claims 1, 7, and 13.

These arguments are not persuasive for the following reasons:

- a,d) Applicant's remarks are directed at new claim limitations that are not being entered.
- b) It was argued previously and is reasserted that both references are at least within the same field of endeavor of mixing processes. A difference in the material mixed is not interpreted as separating these references into different fields of endeavor.
- c) The claims require only that the lead-in gap has the *capability* of being adjusted, but there is no step of adjusting recited in this process claim. As such, it is an apparatus limitation which does not materially affect the process, and is given little patentable weight. Moreover, it was asserted (Final Rejection, 7 March 2007, page 7) that Meinander teaches that the transition or wedge should be designed in one of several configurations, and it would have been obvious to provide movable elements to provide the ability to adjust the design to determine the maximally

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efficient mass introduction design suggested on page 15 of the Meinander reference.

Alternatively, it was asserted that it would have been obvious to make the wedge portions separable in order to clean the interior and the mixing elements. Adjustability, where needed, is generally not a patentable advance, and where there is an art-recognized need for adjustment, the substitution of an adjustable part is obvious. *In re Stevens*, 212 F.2d 197, 101 USPQ 284 (CCPA 1954) (Claims were directed to a handle for a fishing rod wherein the handle has a longitudinally adjustable finger hook, and the hand grip of the handle connects with the body portion by means of a universal joint. The court held that adjustability, where needed, is not a patentable advance, and because there was an art-recognized need for adjustment in a fishing rod, the substitution of a universal joint for the single pivot of the prior art would have been obvious.). Also see MPEP 2144.04(V)(D).

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Matthew J. Daniels whose telephone number is (571) 272-2450. The examiner can normally be reached on Monday - Friday, 8:00 am - 4:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christina Johnson can be reached on (571) 272-1176. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MJD 5/10/07

MJD

CJ
CHRISTINA JOHNSON
SUPERVISORY PATENT EXAMINER
5/11/07